

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7582**

**BILL NUMBER:** SB 633

**NOTE PREPARED:** Jan 17, 2005

**BILL AMENDED:**

**SUBJECT:** Criminal Bail Procedures, Public Adjuster License.

**FIRST AUTHOR:** Sen. Paul

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill specifies conduct requirements for public adjusters and adds penalties for violations of the requirements. It changes the membership of the Insurance Guaranty Association.

The bill also specifies certain bail requirements and provides for use of forfeited funds and funds collected by the clerk of the court.

**Effective Date:** July 1, 2005.

**Explanation of State Expenditures:** *Department of Insurance (DOI).* The bill specifies standards that must be included in the DOI standards for the competent practice of public adjusting. This provision will increase administrative expenses for the DOI; however, any additional expenses from the bill should be within existing staff and resources.

*Indiana Insurance Guaranty Association.* The bill changes the composition of the Association and reduces the number of members from nine to eight. However, this provision will have no impact on state expenditures because members are reimbursed from the assets of the Association for expenses incurred by them as members. The Association is a nonprofit, unincorporated legal entity.

**Explanation of State Revenues:** *DOI.* The proposal adds two additional sanctions that the DOI Commissioner may impose on public adjusters. The Commissioner may deny or refuse to renew a practitioner's certificate or impose a civil penalty not to exceed \$10,000 per offense. Denying or refusing to renew a certificate could reduce revenue collected for renewals, which must be accompanied by a \$50 fee. Fee revenue is used by the DOI to administer the program. Imposing a civil penalty of up to \$10,000 could increase revenues. Civil

penalties are deposited in the state General Fund.

*Bail Requirements--Background:* Bail bond orders are the set of terms and conditions decided by a judge in order to release a defendant from jail between the time of arrest and the time of his/her case judgment. Bail bonds usually involve some sort of collateral supplied by the defendant to ensure that the defendant appears in later court proceedings and agrees to the conditions of release.

This collateral can come in the form of a cash bond, where all the bail money is posted up front; a property bond, where property equal in value to the bond is offered; and a surety bond issued by a bondsman who posts bond for a defendant in exchange for a non-refundable premium. In exchange for this premium or up-front fee, the bail bonds professional will post bail on a defendant's behalf.

Current law allows for either bail bond, 10% cash bond regardless of residency status or criminal charge, or a real estate bond. This bill would make the following changes in the bail law depending on whether the criminal defendant is a resident of Indiana or is charged with a violent felony, a nonviolent felony, or misdemeanor.

<u>Residency Status</u>	<u>Criminal Charge/Prior Offense</u>	<u>Proposed</u>
Resident	Misdemeanor	Real estate bond 10% cash bond and \$20 fee or 25% bail bond written by insurer and \$20 fee
Resident	Nonviolent felony	Real estate bond and \$20 fee or 10% cash bond and \$20 fee or 25% bail bond written by insurer and \$20 fee
Nonresident	Misdemeanor	Real estate bond in the county and \$20 fee or 100% cash bond and \$20 fee or 25% bail bond written by insurer and \$20 fee
Nonresident	Nonviolent felony	Real estate bond in the county and \$20 fee or 100% cash bond and \$20 fee or 25% bail bond written by insurer and \$20 fee
Resident and Nonresident	Violent felony	Bail bond and \$20 fee only
Resident and Nonresident	Failed to appear in any court in any jurisdiction in past 5 years	Bail bond and \$20 fee only
Resident and Nonresident	Prior felony conviction in past 5 years	Bail bond and \$20 fee only
Resident and Nonresident	Currently released from custody from any jurisdiction on any charge	Bail bond and \$20 fee only
Notes: Current law allows for either bail bond or 10% cash bond regardless of residency status or criminal charge. Insurer refers to surety companies qualified to transact business in Indiana.		

*Potential Revenue Increase to the Common School Fund --* This provision could increase revenue forfeitures

deposited in the Common School Fund if certain criminal defendants fail to appear in court. Under current law, criminal defendants awaiting trial can be released from jail by depositing 10% of a bond with the clerk of the court. If they fail to appear in court, they default on the 10% deposit and any assets that are placed with the court to ensure that the defendant will appear before the court at trial. As proposed, criminal defendants who are not residents of Indiana would be required to deposit 100% with the clerk of the court as condition of bail.

As an example, under current law, a defendant who has bail set at \$1,000 would be permitted by the court to deposit 10% (or \$100) of the bail amount with the clerk of the court. As proposed, defendants who are not residents of Indiana would be required to deposit a 100% cash bond to ensure their appearance in court, or they can secure bail through a bail bond agent.

If the defendant fails to appear in court when ordered to do so, the clerk of the court retains the deposit until it determines whether the crime victim files a civil lawsuit against the defendant based on the crime for which the defendant has been accused. If no civil lawsuit is filed, then the deposit is forfeited and transferred to the Common School Fund.

As proposed, if the defendant fails to appear in court, the entire cash deposit of \$1,000 would be available in a civil lawsuit. If no civil lawsuit is filed, then the entire \$1,000 would be forfeited and transferred to the Common School Fund.

Neither the number of nonresident defendants securing bail or the number of civil actions that result from crime victims filing claims against alleged perpetrators is available in published form.

**Explanation of Local Expenditures:** *Summary:* This bill could increase the number of criminal defendants who are held in jail for pretrial detention and increase administrative burdens on the clerk of the court with criminal jurisdiction.

*Defendants Held in Pretrial Detention* – More criminal defendants could be held in jail for pretrial detention if they are not able to secure bail due to restricted options or if they fail to appear in court.

- *Restricted Options* – More criminal defendants who do not live in Indiana, are charged with a violent crime, or have a past felony conviction, failed to appear in court in any jurisdiction in the past 5 years, or are currently released from custody from any jurisdiction on any charge could remain in county jails awaiting trial if they are not able to secure bail for pretrial release. The percentage of criminal defendants who are unable to pay the higher fees and would be required to remain in jail prior to trial is not known.
- *Failure to Appear* – More criminal defendants who fail to appear in court could also be kept in jail. Under current law, defendants who are admitted to bail and knowingly and intentionally fail to appear before the court as ordered must be arrested and not released unless bail is set for more than \$2,500 issued by a bail bond agent. As proposed, defendants who fail to appear for a court appearance *for any reason* who are on pretrial release due to a bond written by an insurer would be arrested and not released from bail for less than \$2,500 issued by a bail bond agent. Depending on the number of cases where criminal defendants have posted bail through a bail bond agency, this provision could increase the number of criminal defendants being held in jail while awaiting trial.

Between CY 2001 and 2003, the Department of Correction (DOC) reports the following information

concerning county jails in Indiana.

<b>Inmates Identified in County Jails by DOC Jail Inspectors</b>						
<u>Calendar Year</u>	<u>2001</u>		<u>2002</u>		<u>2003</u>	
Felony Offenders Under DOC Contract	1,651	12.6%	1,615	11.8%	1,527	10.6%
Sentenced as Misdemeanant	3,128	23.8%	3,515	25.6%	2,623	18.1%
Criminal Defendants Awaiting Trial	8,374	63.7%	8,575	62.6%	10,302	71.3%
Offenders in County Jails	13,153	100.0%	13,705	100.0%	14,452	100.0%

During CY 2003, DOC reported that of the 39 counties that were either at or greater than jail capacity, the percent of inmates in county jails who were awaiting trial ranged from 22% to 100%. The average cost per day is approximately \$44.

*Added Costs to Clerk of the Court* – As proposed, if a criminal defendant has been admitted to bail by posting a cash bond with the clerk of the circuit court and fails to appear for any reason, the clerk of the circuit court would be required to mail notice of forfeiture to the defendant and allow 120 days before determining whether any justification exists for the defendant not appearing in court. There is no published information on the number of criminal defendants in Indiana who fail to appear in court after posting cash bond with the clerk of the court.

**Explanation of Local Revenues:** This bill could have mixed effects on revenue that is collected from criminal defendants. Added revenue could be collected from a new \$20 fee and by larger amounts of cash deposits. These revenue gains could be offset if defendants are not able to afford any added deposits and instead rely on bail bond agents.

*Added Revenue from Bond Administration Fees* – Under current law, the court may set bail for a person accused of either misdemeanors or most felonies and allow this person to deposit cash or securities for 10% of the established bail with the clerk of the court. If the person is found not guilty, then the court may charge a \$50 administrative fee. If the person is convicted, the court may retain all or a portion of the cash or securities to pay all of the fines. The clerk is also required to retain from the deposit any additional amounts to pay for fines, fees, restitutions, and publicly paid costs of legal representation.

Depending on the status of the defendant and the actions of the court, a larger deposit could result in larger amounts retained by the clerk when a defendant is convicted of a felony. This is because the clerk would be able to recover added revenue for fees, fines, and any costs of publicly paid legal representation during court proceedings. The money that the clerk collects under this section of the statute is called the Bond Administration Fee.

The following table shows the collections from the Bond Administration Fees for the past six calendar years.

<b>Bond Administration Fee Revenues</b>						
<b>CY</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Trial Courts	\$1,018,571	\$983,253	\$1,133,952	\$1,212,065	\$1,349,972	\$1,388,563
City & Town Courts	167,152	109,499	144,573	250,838	225,851	202,512
Total Revenue Collected	\$1,185,723	\$1,092,752	\$1,278,525	\$1,462,903	\$1,575,823	\$1,591,075

*Added Revenue from New \$20 Fee:* The \$20 fee that would be collected by the courts will depend on the number of bail bonds that are posted with the clerks. There are no published figures on the number of bail

bonds or cash or security deposits that are posted for pretrial release in a year. Proceeds from this fee would be split between the supplemental public defender services fund and a separate account in the county general fund for jail improvements.

*Restrictions on Cash Deposit With Clerk:* Defendants who are currently released from custody from any jurisdiction on any charge, who failed to appear in court within the preceding five years, or who have been convicted of a felony in the previous five years, would not be permitted to deposit money with the clerk of the court. If these defendants are not able to make a cash deposit because they cannot afford a 100% cash bond, then they will either stay in jail or use a surety agent to make secure pretrial release.

If a criminal defendant executes bail with a bail bondsman and fails to appear in court, a Late Surrender Fee (based on a percentage of the value of the bond) is assessed against the bondsman. Half of the revenue from the Late Surrender Fee is deposited in the Police Pension Trust Fund, and the other half is deposited in a County Extradition Fund. This bill potentially increases revenue from the Late Surrender Fee if more criminal defendants use a bail bondsman and fail to appear in court.

Local governments reported receiving the following amounts from the Late Surrender Fee between CY 1998 and CY 2003.

Revenue From Late Surrender Fees						
CY	1998	1999	2000	2001	2002	2003
Trial Courts	\$739,321	\$820,023	\$1,041,349	\$588,100	\$580,776	\$526,716
City & Town Courts	10,528	11,665	16,568	128,923	235,834	242,468
Total Revenue Collected	\$749,849	\$831,688	\$1,057,917	\$717,023	\$816,610	\$769,184

**State Agencies Affected:**

**Local Agencies Affected:** Trial Courts, Clerk of the Court, Sheriff's Departments.

**Information Sources:** Department of Correction; DOI;

For Bail/Bond information: [http://www.onlinelawyersource.com/bail\\_bond/statistics.html](http://www.onlinelawyersource.com/bail_bond/statistics.html)

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